

PART 222—DEFINITION AND CREDITABILITY OF COMPENSATION

Sec.	Sec.
222.1 Statutory provisions.	(d) Remuneration by an annuitant.
222.2 Definition of compensation.	
222.3 Creditability of compensation.	222.4 Payment in settlement for personal injury not creditable as compensation.
(a) Compensation for one month in excess of \$300.00.	222.5 Verification of compensation claimed.
(b) Compensation earned after age sixty-five.	
(c) Compensation dependent upon creditability of service.	

Section 222.1 Statutory provisions. "The term 'compensation' means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of any tax now or hereafter imposed with respect to the compensation of such employee." (Sec. 1 (h), 50 Stat. 309; 45 U.S.C., Sup. 228a (h))

"* * * If the employee earned compensation after June 30, 1937, and after the last day of the month in which he attained age 65, such compensation shall be disregarded if the result of taking such compensation into account would be to diminish his annuity. In computing the monthly compensation, no part of any month's compensation in excess of \$300 shall be recognized." Sec. 3 (c), 50 Stat. 311; 45 U.S.C., Sup. 228c (c))†

†In §§ 222.1 to 222.5, inclusive, the numbers correspond with the respective section numbers in the Regulations under the Railroad Retirement Act of 1937, RRB, reissued Apr. 1, 1939, effective June 1, 1938, 4 F.R. 1489 (DI).

222.2 Definition of compensation. Compensation shall mean the amount an individual earns for service performed as an employee. This amount shall include amounts to be paid in the form of a commodity, service, or privilege, only if the employer and employee, before the performance of the service for which it is payment, have agreed (a) upon the value of such commodity, service, or privilege, and (b) that such part of the amount agreed upon to be paid may be paid in the form of such commodity, service, or privilege. Compensation shall also include amounts paid by an employer to an individual for time lost during which time the individual had, with the employer, an employment relation, as defined in the Act and Part 204.

A waiver or refund of organization dues, in all cases in which the amount waived or refunded do not include elements in addition to the consideration for membership in the organization (such as, for example, insurance payments), even though motivated by the rendition of valuable services on the part of the individual to the organization, does not constitute compensation unless it appears by affirmative evidence that such waiver or refund was intended to be and was

accepted as a discharge of an obligation of the organization to compensate the individual for service rendered.† (Secs. 1, 10, 50 Stat. 307, 314; 45 U.S.C., Sup., 228a, 228j)

222.3 Creditability of compensation—(a) Compensation for one month in excess of \$300.00. In no case shall compensation in excess of three hundred dollars be credited for any one month of service.

(b) Compensation earned after age 65. Compensation earned after the last day of the month in which the individual becomes 65 years of age shall not be credited unless the crediting thereof would increase the amount of his annuity.

(c) Compensation dependent upon creditability of service. No amount shall be credited as compensation unless it is received or earned for service creditable in accordance with § 220.3.

(d) Remuneration by an annuitant. Remuneration earned or received by an individual for service performed while he is in receipt of an annuity shall not be creditable as compensation.† (Secs. 1, 3, 10, 50 Stat. 307, 310, 314; 45 U.S.C., Sup., 228a, 228c, 228j)

222.4 Payments in settlement for personal injury not creditable as compensation. A sum or sums paid by an employer solely in settlement or in lieu of settlement of a real or supposed liability for personal injury shall not be creditable as compensation; Provided, however, That payments shall be presumed, in the absence of facts to the contrary, not to have been made solely in settlement or in lieu of settlement of such liability when such payments (a) cover a period not in excess of 6 months, (b) are computed at a rate not in excess of that which had previously been the individual's rate of pay, and (c) are made at or before the end of the period covered by them. The Board shall determine the creditability of the payments made in any other case on the basis of the facts of the particular case.† (Secs. 1, 10, 50 Stat. 307, 314; 45 U.S.C., Sup., 228a, 228j)

222.5 Verification of compensation claimed. Compensation claimed shall be verified to the extent deemed necessary by the Board, to determine the "monthly compensation" referred to in § 225.3 and shall be verified from employers' pay roll or other detailed records; where such records are not available the compensation claimed shall be verified as follows:

(a) By the employee submitting income tax records or a diary or other personal record; Provided, however, That such records shall not be considered unless similar records are furnished covering a reasonable period of time for which employer records are available, and the difference between the amount of compensation shown by the employee's records and that shown by the employer's records is not more than 2 per centum.

(b) Notwithstanding the lack of some compensation records required to calculate the "monthly compensation" during the years 1924 to 1931, inclusive, the amounts of annuities may be determined finally on the basis of such compensation records as are available:

(1) If 48 months or more service in the period 1924–1931 are proved and carrier compensation records are furnished for every month in which service was proved; or,

(2) If some but less than 48 months service in the period 1924–1931 are proved and carrier compensation records are furnished for all the months proved, if the average monthly compensation calculated from the foregoing is \$200 or more; or,

(3) If 48 months or more of service in the period 1924–1931 are proved but carrier compensation records are missing for some of these months and where no change in occupation in the period 1924–1931 is reported either by the carrier or the employee, provided that carrier compensation records are furnished for at least one-half of the service proved in the period; or,

(4) If 48 months or more of service in the period 1924–1931 are proved but carrier compensation records are missing for some of these months and where a change in occupation in the period 1924–1931 is reported either by the carrier or the employee, provided that carrier compensation records are furnished for at least $\frac{7}{8}$ of the service proved in the period and for at least $\frac{5}{6}$ of the service proved in any one calendar year;

Provided, however, That if subsequent to such adjudication, compensation records should be supplied or found, the annuity shall be redetermined.

(c) In any case in which compensation records required to calculate the “monthly compensation” during the years 1924–1931, inclusive, are not available, and a final determination cannot be made according to the rules set forth in the preceding paragraph, a claim otherwise ready for certification may be temporarily certified on the basis of compensation for the period of missing records calculated as follows:

(1) Compute an average annual compensation for each year in which records are missing and for each occupation in which the employee was engaged during each such year, by dividing the total compensation reported to the Interstate Commerce Commission for the year and for the appropriate occupation group or groups by the employer by whom the applicant was employed, by the average number of employees on the fifteenth of each month for the same occupation group and year; provided that where, because of small numbers involved, the resulting average is not typical, an appropriate adjustment may be made; and provided further, if the annual average is greater than \$3,600, \$3,600 shall be used as the average;

(2) Compute the total compensation for the period of missing records by summing the totals of the averages so computed, appropriately adjusted for the proportion of year worked in each occupation;

(3) Compute the compensation claimed by the applicant for the period of missing records, using, if a total or average compensation is not claimed, such hourly, daily or weekly rates as may be reported by the applicant, using 208 hours or 25.5 days per month, and 12 months per year or $52\frac{1}{4}$ weeks per year. In summing the claimed compensation the same adjustments for time worked shall be made as were made for the averages in the preceding subparagraph;

(4) Divide 90 percent of the sum in subparagraph (2) or 90 percent of the sum in subparagraph (3), whichever is smaller, plus the

actual compensation for the period reported, not in excess of \$300 per month, by the total number of months in the 8 year period, less the number of whole calendar months of absence indicated by the employer's personnel records during the period of missing compensation records and by the pay rolls, for the period for which they are available. Annuities thus temporarily certified shall be subject to recertification upon submission by the employer of satisfactory proof of the compensation actually received.

(d) Claims which cannot be certified finally or temporarily under the rules set forth in the two preceding subparagraphs shall be certified finally or temporarily under regulations which the Board may from time to time prescribe.

(e) In any case involving verification of compensation the Board may prescribe the extent and manner in which such compensation shall be established.† (Secs. 1, 3, 10, 50 Stat. 307, 310, 314; 45 U.S.C., Sup., 228a, 228c, 228j)

PART 225—COMPUTATION OF ANNUITY

Sec.	Sec.
225.1 Formula for computing annuity.	225.6 Reduction by reason of previous disability annuity.
225.2 Determination of "years of service."	225.7 Reduction by reason of election of joint and survivor annuity.
225.3 Determination of "monthly compensation."	225.8 Maximum amount of annuity.
225.4 "Compensation" that is included in determining "monthly compensation."	225.9 Minimum amount of annuity.
225.5 Annuities subject to reduction where individual is under age sixty-five.	(a) Employee at age sixty-five with twenty years' service.
	(b) Minimum applicable to all cases.
	225.10 Annuity not subject to recomputation.

Section 225.1 Formula for computing annuity. The annuity shall be computed by multiplying an individual's "years of service" by the following percentages of his "monthly compensation": 2 per centum of the first \$50; 1½ per centum of the next \$100; and 1 per centum of the next \$150.*†

*§§ 225.1 to 225.10, inclusive, (with the exceptions noted in the text,) issued under the authority contained in secs. 3, 10, 50 Stat. 310, 314; 45 U.S.C., Sup., 228c, 228j.

††In §§ 225.1 to 225.10, inclusive, the numbers correspond with the respective section numbers in the Regulations under the Railroad Retirement Act of 1937, RRB, reissued Apr. 1, 1939, effective June 1, 1938, 4 F.R. 1490, 1491 (DI).

225.2 Determination of "years of service." The "years of service" of an individual shall be determined in accordance with the provisions of § 220.3.*†

225.3 Determination of "monthly compensation." The "monthly compensation" of an individual shall be computed by totaling the compensation earned by him in his "years of service" (excluding compensation in excess of \$300 earned in any one month) and dividing that sum by the number of months in his "years of service," except (a) with respect to service prior to January 1, 1937, included